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No. 1

Supreme Court of the United States

OCTOBER TERM, 1950

JAMES WATKINS,

v.

PEOPLE OF THE STATE OF ILLINOIS.

INDEX.

	Page
Opinion below	1
Jurisdiction	2
Questions presented	3
Statutes involved	4
Statement	5
Reasons for granting the writ	8
Conclusion	11
Appendix A—Opinion and judgment below	1a-14a
Appendix B—Statutes and ordinances	15a-16a

CITATIONS

Cases:

Bucher v. Krause, 260 F. 2d 576, cert. denied 73 S. Ct. 1141, 345 U.S. 997, rehearing denied 74 S. Ct. 17, 346 U.S. 842	9
City of Chicago v. Lord, 7 Ill. 2d 379, 130 N.E. 2d 504	10
Cole v. Arkansas, 333 U.S. 196	8, 9
Goubel v. United States, 255 U.S. 298	10
Griffin v. Illinois, 351 U.S. 12, 17	11
Henry v. United States, 361 U.S. 98	10
Jones v. United States, 362 U.S. 257	11
People v. Brewer, 355 Ill. 348, 189 N.E. 321	9
People v. Dalpe, 371 Ill. 607, 21 N.E. 2d 756	10
People v. Exum, 382 Ill. 204, 47 N.E. 2d 56	10
People v. Galloway, 7 Ill. 2d 527, 131 N.E. 2d 474	9
People v. Grod, 385 Ill. 384, 53 N.E. 2d 591	10
United States v. Lefkowitz, 285 U.S. 452	10
Wolf v. Colorado, 338 U.S. 25	10

Statutes:

Ill. Rev. Stat., Ch. 24, ¶ 23-27 ..... 4, 15a
Ill. Rev. Stat., Ch. 38, ¶ 413 ..... 4, 15a
Ill. Rev. Stat., Ch. 38, ¶ 657 ..... 4, 9
Chicago, Ill., Municipal Code, 27-122(a) (6) 4, 16a
Chicago, Ill., Municipal Code, 27-171(a) 4, 15a

Miscellaneous:

Annot., 50 A.L.R. 2d 531 10
28 Geo. Wash. L. Rev. 663-666 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

JAMES WATKINS,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ILLINOIS

James Watkins, Petitioner, prays that a writ of certiorari issue to review in this case the judgment of the Supreme Court of Illinois.

CITATIONS TO OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported in 19 Ill. 2d 11, 166 N.E. 2d 433, and is printed in Appendix A hereto, *infra*, pages 1a-14a.

JURISDICTION.

Final judgment of the Supreme Court of Illinois was entered March 31, 1960. R. 124; Appendix A, p. 1a, *infra*. The jurisdiction of this court is invoked under 28 U.S.C., Section 1257 (3). Constitutional questions were raised in the trial court by a timely motion to suppress evidence obtained as the result of an illegal arrest and an unreasonable search and seizure. (R. 19-21; 40-42). Rulings of the trial court rejecting petitioner's claimed deprivation of constitutional rights were preserved for review; and the Supreme Court of Illinois accepted jurisdiction and passed specifically on the constitutional questions. (R. 114-119; Appendix A, pp. 1a-14a).

QUESTIONS PRESENTED

1. Whether petitioner was denied due process of law by a judgment of the Supreme Court of Illinois in which petitioner's conviction for the crime of possessing policy slips was affirmed on the theory that arresting officers knew petitioner, a theory which was not advanced by the prosecution nor relied on by the trial court when it overruled petitioner's motion to suppress evidence obtained from petitioner as the result of a search which the Supreme Court of Illinois in its affirmance denounced as illegal.

2. Whether petitioner was denied equal protection of the laws of Illinois, laws which protect every citizen from arrests on suspicion, when the Supreme Court of Illinois held that search of petitioner's person following an arrest for a minor traffic violation was unreasonable; but the court affirmed petitioner's conviction on the theory that petitioner's arrest and subsequent search could be sustained on the ground that the arresting officers knew petitioner, although there was no evidence that at the time of his arrest petitioner was committing any violation of law other than the minor traffic violation for which petitioner was in fact arrested—an arrest which the Supreme Court of Illinois held did not justify the search which produced evidence used to obtain petitioner's conviction.

3. Whether the affirmance of petitioner's conviction by the Supreme Court of Illinois on a ground not advanced by the prosecution in the trial court, and one on which petitioner had no notice would be used to support the search of his person and sustain his conviction, and one

on which he had no opportunity to be heard, denied petitioner due process of law, in violation of the provisions of the 14th Amendment to the federal constitution.

4. Whether the affirmance of petitioner's conviction and the approval of petitioner's arrest and search of his person on suspicion, in the face of well established Illinois law that arrests and searches of citizens on suspicion are unconstitutional and illegal, denied petitioner equal protection of the laws of Illinois in violation of the provisions of the 14th Amendment to the federal constitution.

5. Whether this case presents federal constitutional questions of such importance as to warrant grant of review by certiorari.

STATUTES INVOLVED

The statutory provisions involved are paragraph 413, Ch. 38, Ill. Rev. Stat. (1959); paragraph 657, Ch. 38, Ill. Rev. Stat. (1959); paragraphs 23-27, Ch. 24, Ill. Rev. Stat. (1959), pursuant to which paragraphs 27-122(a), 169 and 27-171(a), Municipal Code of Chicago were adopted. These are printed in Appendix B, *infra*, pp. 15a-16a.

STATEMENT

Prairie Avenue in the City of Chicago is a north and south street in the city's famous South Side. Forty-fourth Street in the same area, is a street that runs east and west. The point where Forty-fourth Street crosses Prairie Avenue is on the east side of the city.

On January 28, 1958, shortly after the noon hour, between 12:00 and 12:30 P.M., petitioner, James Watkins, drove his "* * * pink convertible 1956 Oldsmobile * * *" (R. 50) south on Prairie Avenue and then parked his car on the southeast corner of Forty-fourth Street and Prairie (R. 50). Two Chicago police officers were approximately "* * * three-quarters of a block * * *" (R. 52) behind him. The two officers saw petitioner park his car; and "* * * we noted that it was less than twenty feet from the crosswalk * * *" (R. 50). Petitioner got out of his car and walked hurriedly across the street into a building on the west side of Prairie Avenue, 4400 South Prairie (R. 50). The officers waited for petitioner to arrest him for having parked his car less than 20 feet from the crosswalk (R. 60-61).

About seven minutes later (R. 50), petitioner came out of 4400 South Prairie, and when he was as far as the middle of the street, he saw the officers and ran back into the building (R. 50). One of the officers "* * * went into the building and brought * * * petitioner back to the point where he had parked his car. In the presence of petitioner, the officers measured the distance between the car and the cross-walk and found it to be 12 feet (R. 50, 54). The officers arrested petitioner and charged him "* * * with parking less than 20 feet from the cross-walk * * *" (R.

51). One officer said to petitioner, "You're under arrest". "What do you have on you?" (R. 54). Petitioner was searched; and the officers found on him policy paraphernalia consisting of policy writing and slips (R. 51, 53, 54, 55, 56). These were later prosecution evidence as People's Group Exhibits 1 and 2 (R. 76, 77).

Although petitioner was arrested for the traffic violation, he was not prosecuted for that crime. He was charged with having violated an Illinois statute prohibiting the possession of policy slips, Chapter 38, paragraph 413, Ill. Rev. Stat. (1959); and the evidence taken from him by the police (R. 51, 53, 54-56) was offered by the prosecution (R. 76-77).

Petitioner moved to suppress the evidence (R. 19-21; 40-42) on the ground that the arrest for a minor traffic violation did not justify the search made of his person (R. 51, 53-56). Petitioner argued that the search was illegal and unreasonable, and deprived petitioner of rights secured and guaranteed to him by the federal constitution. The trial court heard evidence in support of the petition (R. 43-71). The theory of the prosecution, which was sustained by the trial court, was that petitioner's arrest for a minor traffic violation authorized search of his person. Therefore, the arrest was legal (R. 43-71). The trial court relied on established Illinois law (R. 62-70), denied the petition to suppress evidence, and admitted as People's Group Exhibits 1 and 2 (R. 76-77), the evidence taken from petitioner at the time he was arrested (R. 51, 53-56).

Petitioner then sought and obtained review in the Supreme Court of Illinois on the theory that a construction of the constitution was involved (R. 114-123). The court analyzed Illinois law dealing with the constitutional valid-

ity of a search incident to an arrest for a minor traffic violation and held that "* * * when no more is shown than that a car was parked too close to a cross-walk or too far from a curb, the constitution does not permit a policeman to search the driver. * * *" (R. 119). However, the Supreme Court of Illinois went on to hold that the search of the petitioner in this case could be justified on the ground that the arresting officers were members of the gambling detail and that they knew the defendant (R. 119). There was no finding by the Supreme Court of Illinois that the knowledge of petitioner by the police officers included any information that at the time of his arrest he was committing a crime (R. 114-123).

REASONS FOR GRANTING THE WRIT

1. "* * * No principle of procedural due process is more clearly established than that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal. * * *" *Cole v. Arkansas*, 333 U.S. 196.

In this case, petitioner was arrested because he allegedly parked his car 12 feet from a crosswalk in violation of an ordinance of the City of Chicago which prohibited the parking of a vehicle less than 20 feet from a crosswalk (R. 50-51, 73; Appendix B, p. 16a). Following the petitioner's arrest he was searched (R. 44-53); and the police took from him evidence which was later used in his prosecution for the crime of possessing policy slips (R. 73-76). At his trial, petitioner made a timely motion to suppress the evidence taken from his person; and he raised federal constitutional questions concerning the validity of his arrest and the subsequent search of his person (R. 21, 40-42).

The trial court, consistent with the theory of the prosecution (R. 49-51), overruled petitioner's objections to the admission of the evidence taken from his person; and the court sustained the theory of the prosecution that Illinois law, as it was then understood by the trial court, sanctioned the search of the driver of a car after his arrest for a minor traffic violation (R. 63, 64, 69-70). At no time at the trial, was petitioner confronted with the charge that he was arrested on suspicion, or that his arrest was based on the fact that the arresting officers knew him.

By statute in Illinois, as construed by the decisions of the Supreme Court, arrests on mere suspicion are illegal.

Chapter 38, Section 657, Ill. Rev. Stat. (1959). *Becker* v. *Krause*, 200 F. 2d 576, cert. denied 73 S. Ct. 1141, 345 U.S. 997, rehearing denied 74 S. Ct. 17, 346 U.S. 842; *People* v. *Brown*, 355 Ill. 348, 189 N.E. 321; *People* v. *Galloway*, 7 Ill. 2d 527, 131 N.E. 2d 474.

On review of petitioner's conviction the Supreme Court of Illinois overruled the trial court and held that the search of petitioner's person was unreasonable because "* * * when no more is shown than that a car was too close to a crosswalk, or too far from a curb, the Constitution does not permit a policeman to search the driver. * * *" (R. 119; Appendix A, p. 8a). However, the Supreme Court of Illinois affirmed petitioner's conviction on the theory that "* * * The arresting officers were members of the gambling detail. They knew the defendant and he knew them, because they had arrested him on previous occasions. * * *" (R. 119; Appendix A, p. 8a).

From the rulings of the trial court at the time petitioner's motion to suppress the evidence was heard (R. 69, 70), it is clear that if the law of Illinois had been declared by the Supreme Court in petitioner's affirmance, the trial court would have sustained petitioner's motion to suppress the evidence. Consequently, petitioner would have been acquitted because there was no evidence on which a conviction could stand. At no time was the theory upon which the affirmance rests ever advanced in the trial court. Therefore, the Illinois Supreme Court denied petitioner due process of law in affirming his conviction on the theory of a charge of wrongdoing never advanced in the trial court. What this court said in *Cole* v. *Arkansas*, 333 U.S. 196 is applicable here:

2. The case at bar presents an instance of something more than admission of evidence obtained as the result of an unreasonable search and seizure. The case presents an instance in which the arrest was intended solely to obtain evidence with which to prosecute petitioner. This court has said that "* * * An arrest may not be used as a pretext to search for evidence. * * *" *United States* v. *Lefkowitz*, 285 U.S. 452. Furthermore, it has been recognized that admission in evidence of papers taken from an owner, over his objections, compels him to be a witness against himself in violation of the fifth amendment to the Constitution of the United States. *Gouled* v. *United States*, 255 U.S. 298. See: Annot., 50 A.L.R. 2d 531-592, and compare with case the recent decision of this court in *Henry* v. *United States*, 361 U.S. 98. A careful analysis of *Henry* is published in 28 Geo. Wash. L. Rev. 661-666.

3. The fourth and fifth amendments to the federal constitution are restrictions upon the federal government. *Wolf* v. *Colorado*, 338 U.S. 25. However, in Illinois the Supreme Court has held that the provisions of the fourth and fifth amendments are akin to Article II, Sections 6 and 10 of the Illinois Constitution and are to be construed alike. *City of Chicago* v. *Lord*, 7 Ill. 2d 379, 130 N.E. 2d 504; *People* v. *Exum*, 382 Ill. 204, 47 N.E. 2d 56. These restrictions of the federal constitution have been held applicable to Illinois executive authorities. *People* v. *Bolpe*, 371 Ill. 607, 21 N.E. 2d 756; *People* v. *Graul*, 385 Ill. 584, 53 N.E. 2d 591. These are the laws of Illinois, constitutional and statutory, to which petitioner was entitled equal protection. This court has had occasion to say that "* * * our own constitutional guarantees of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and

different groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court' . . . ." *Griffin* v. *Illinois*, 351 U.S. 12, 17. Compare *Jones* v. *United States*, 362 U.S. 257. There is no reason why petitioner should have been treated otherwise in the highest court of Illinois. We submit that as a consequence of the Illinois Supreme Court judgment, petitioner was denied due process of law and equal protection of the laws.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ William R. Meyer, Jr.,
/s/ Gladys N. Deighton,

Counsel for Petitioner.

APPENDIX A.

Opinion of the Supreme Court of Illinois

Docket No. 35175 Agenda 10 May, 1959.

The People of the State of Illinois, Defendant in Error, v. James Watkins, Plaintiff in Error.

MR. JUSTICE SCHAEFER delivered the opinion of the court:

The defendant, James Watkins, was tried in the criminal court of Cook County upon a charge of possession of "policy" slips. Count 1 of the indictment charged him with possession; count 2 repeated that charge and also charged a former conviction for the same offense. (Ill. Rev. Stat. 1957, chap. 38, par. 413.) He was first found guilty on count 2 of the indictment, and then, after he had applied for probation, the prosecution's motion to *nolle prosequi* count 2 was allowed and he was sentenced to six months in the county jail on count 1.

Upon the merits, the defendant contends that the judgment must be reversed on two grounds: first, because his motion to suppress evidence taken from him in violation of his constitutional rights was denied, and second, because the original finding of guilty on count 2 amounted to a finding of not guilty on count 1, the count upon which he was ultimately sentenced. Before we reach these contentions, however, it is necessary to determine whether this court, or the Appellate Court, has jurisdiction to review this misdemeanor conviction upon a writ of error directly to the trial court. The People have suggested that the case belongs in the Appellate Court, and in support of that sug-

is involved shall be taken directly to the supreme court in case the party appealing or prosecuting such writ of error shall so elect." In 1879, section 88 was amended, and the following sentence concerning the distribution of jurisdiction between the Supreme and Appellate courts was enacted: "Appeals from and writs of error to circuit courts . . . in all criminal cases, below the grade of felony, shall be taken directly to the appellate court, and in all criminal cases above the grade of misdemeanors, and cases in which a franchise or freehold or the validity of a statute or construction of the constitution is involved; and in all cases hereafter to become, or in which the State is interested as a party or otherwise, shall be taken directly to the supreme court." Laws of 1879, p. 282. That sentence, with an additional clause concerning cases involving the validity of municipal ordinances, was carried forward into section 118 of the Practice Act of 1907. Laws of 1907, p. 467.

When the Civil Practice Act became effective in 1934, the single sentence of the 1907 act was split into two parts. The provisions dealing with criminal cases were transferred by certain to division XV of the Criminal Code and became section 14 of that division. Ill. Rev. Stat. 1969, chap. 38, par. 780. The balance of the jurisdictional provisions were incorporated without change in section 75 of the Civil Practice Act. Ill. Rev. Stat. 1969, chap. 110, par. 75.

These multiple provisions are not completely consistent. Section 8 of the Appellate Court Act seems to provide that the Supreme Court has jurisdiction, on direct review, "in all criminal cases," and that the Appellate Court has concurrent jurisdiction in misdemeanor cases. On the other hand section 14 of division XV of the crim-

inal Code seems to provide for direct review of all misdemeanors in the Appellate Court. Neither of these results has followed. The General Assembly has not regarded the Appellate Court Act as a significant jurisdictional control, for when it has redistributed jurisdiction from time to time, it was done so by amending the Practice Act. It has made no attempt to include the changes so made in the Appellate Court Act. Compare Ill. Rev. Stat. 1959, chap. 37, par. 32, with chap. 110, par. 75.

Over the years this court, too, has looked to the provisions of the practice acts for its jurisdictional standards. *People* v. *Warda*, 334 Ill. 160, 163 (1929). So it has taken jurisdiction to review misdemeanor convictions when the validity of a statute or a construction of the constitution was involved. *People* v. *McGarr*, 341 Ill. 632 (1930); *People* v. *Humphreys*, 353 Ill. 340 (1933); *People* v. *McGarr*, 415 Ill. 575 (1953); *People* v. *Shamblin*, 4 Ill. 2d 38 (1954); *People* v. *Clark*, 9 Ill. 2d 400 (1956); *People* v. *Wells*, 15 Ill. 2d 171 (1958), and has refused to exercise jurisdiction in the absence of those issues. *People* v. *Bassett*, 360 Ill. 192 (1935); *People* v. *Harrison*, 397 Ill. 618 (1947); *People* v. *Estep*, 409 Ill. 125 (1951); *People* v. *Williams*, 3 Ill. 2d 79 (1954).

The transposition of a part of the jurisdictional provision from the Practice Act to the Criminal Code has not been regarded as effecting any change in the distribution of jurisdiction between the Supreme Court and the Appellate courts. There is no suggestion in the contemporaneous literature that any change was intended. It is unlikely that the General Assembly thought that a redistribution was being made when no change was made in the words used and the only modification was the transposition of a part of one sentence from one act to another. In any case, the

General Assembly appears to have acquiesced in the court's view of the situation, for since 1934 it has made no change in the jurisdictional scheme that is relevant to the present problem. Under these circumstances we adhere to the prior determinations of this court that this court has jurisdiction to review directly misdemeanor cases which involve the validity of a statute or a construction of the constitution.

The People also suggest that this court lacks jurisdiction because a construction of the constitution is not involved in the case. The defendant maintains that our jurisdiction is established by his contention that policy slips introduced into evidence at the trial were obtained from him by unreasonable search and seizure. In support of their position, the People state that the policy slips were seized only after the defendant had been arrested for a parking violation, that the legality of search and seizure incident to a valid arrest, even for minor misdemeanors, has been settled by prior decisions of this court, and, therefore, that the defendant's contention presents no debatable question requiring a construction of the constitution.

This position was expressed by the court in a few older decisions transferring illegal search cases to the Appellate Court. (See *People* v. *Hoffa*, 320 Ill. 117; *People* v. *Bruce*, 317 Ill. 639.) It is based, however, on the assumption that the boundaries of the protection provided by the unreasonable search and seizure provisions of our constitution may be determined by the declaration of one simple rule. It may be that the meaning of some constitutional provisions can be authoritatively settled in that way. But that is emphatically not true of the great generalizations of the constitutions, State and Federal. Their

meaning can be determined only by specific applications. This is particularly true of the constitutional provision involved in the present case. "What is a reasonable search is not to be determined by any fixed formula. The Constitution does not define what are 'unreasonable' searches, and, regrettably, in our discipline we have no ready litmus-paper test. The recurring questions of the reasonableness of searches must find resolution in the facts and circumstances of each case." *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357." *United States v. Rabinowitz*, 339 U.S. 56, 63, 94 L. ed. 653; cf. *People v. Tillman*, 1 Ill. 2d 525, 530.

This approach to the jurisdictional problem is implicit in the host of cases involving searches incident to arrest where this court has taken jurisdiction on direct appeal. (See, *e.g.*, *People v. West*, 15 Ill. 2d 171; *People v. Clark*, 9 Ill. 2d 400.) Despite the purported rule that such searches are proper, we acted on the assumption that each individual case raised debatable constitutional questions. It may be that some future cases will be so similar to others already decided that the issues they present must be regarded as settled. That is not, however, true of the case now before us, and we hold, therefore, that we have jurisdiction on direct appeal based on debatable questions requiring construction of the constitution.

To establish the validity of the search in this case, the People rely on *People v. Clark*, 9 Ill. 2d 400, a unanimous decision of this court in which one of the grounds for sustaining a search of the person was that it had been made in connection with an arrest for a traffic violation. The cumulative impact of subsequent cases, coupled with the nature of the traffic violation here involved, has caused the court to reconsider. The *Clark* opinion rests on reasoning

that runs like this: (1) a traffic violation is a misdemeanor; (2) a police officer has a right to arrest when a misdemeanor is committed in his presence; (3) an arresting officer has the right to search the person of one whom he arrests. Each of these propositions, taken by itself and with the limitations imposed by its original context, is correct enough. But when they are combined, transplanted, and used to govern the interpretation of the constitution, they produce an improper result.

The constitution prohibits only unreasonable searches; it permits those that are reasonable. The critical issue in each case must be whether the situation that confronted the officer justified the search. That question can not be determined by an indiscriminate application of legal concepts that were evolved to meet quite different problems. A uniform rule permitting a search in every case of a valid arrest, even for minor traffic violations, would greatly simplify our task and that of law enforcement officers. But such an approach would preclude consideration of the reasonableness of any particular search, and so would take away the protection that the constitution is designed to provide. Other courts are in accord. They have refused to establish a uniform rule to govern all searches accompanying valid arrests, but rather have examined the nature of the offense and the surrounding circumstances to determine whether the search was warranted. Cf. *People v. Brodie*, 46 Cal. 2d 114, 293 P.2d 57; *Elliott v. State*, 173 Tenn. 20, 116 S.W. 2d 1009; *People v. Gonzales*, 356 Mich. 247, 97 N.W. 2d 16; See: Einhorn, The Exclusionary Rule in Operation, 50 J. Crim. L., C. & P. S. 143, 160 (1959); 1959 Wis. L. Rev. 347.

A search incident to an arrest is authorized when it is reasonably necessary to protect the arresting officer from

attack, to prevent the prisoner from escaping, or to discover fruits of a crime. But the violation involved in this case was parking too close to a crosswalk,—the kind of minor traffic offense that ordinarily results in a "parking ticket" hung on the handle of the door of the car, telling the offender that it is not necessary to appear in court if he mails in the amount of his fine. Such an offense does not, in itself, raise the kind of inferences which justify searches in other cases. Some traffic violations would justify a search. The total absence of license plates, for example, as in *People* v. *Berra*, 17 Ill. 2d 247, could reasonably suggest a serious violation of the law, as could an obscured license plate upon a car being driven in the early morning hours, as in *People* v. *Esposito*, 18 Ill. 2d 104. But when no more is shown than that a car was parked too close to a crosswalk or too far from a curb, the constitution does not permit a policeman to search the driver. To the extent that *People* v. *Clark*, 9 Ill. 2d 400, and *People* v. *Berra*, 17 Ill. 2d 247, conflict with these views, they are overruled.

The search that was made here can be justified, however, without relying solely upon the traffic violation. The arresting officers were members of the gambling detail. They knew the defendant and he knew them, because they had arrested him on previous occasions. They watched him park his car and saw him go into the building. He saw them at that time. He emerged twenty minutes later, but ran back into the building as soon as he saw that the officers were still there. Police officers often must act upon a quick appraisal of the data before them, and the reasonableness of their conduct must be judged on the basis of their responsibility to prevent crime and to catch criminals. With this in mind, we think that the circumstances made it reasonable for the arresting officers to assume that the

were dealing with a situation more serious than a routine parking violation. The search of defendant's person after his arrest did not, therefore, violate his constitutional right against unreasonable search and seizure, and the policy tickets obtained by the search were properly admitted in evidence.

The defendant contends that the trial court was powerless to enter a sentence upon count 1 of the indictment because the specific finding of guilty on count 2, without any finding on count 1, amounted to an acquittal on count 1. We rejected the same argument in *People* v. *Berra*, 17 Ill. 2d 247, 252-53, a case argued by the same counsel, decided by the same trial judge, and involving an indictment and procedural circumstances identical to those in the present case. What was said in that opinion applies with equal force here. For the reasons there stated, it is our view that sentence was properly entered on the first count. The judgment is affirmed.

Judgment affirmed.

Mr. JUSTICE DAILY, specially concurring:

While I agree that the search of defendant's person in this case was constitutionally permissible, I do not agree that something more than a valid arrest itself, whether it be for a felony or a misdemeanor, is necessary to bring a search of the person within constitutional standards.

In the landmark case of *Weeks* v. *United States*, 232 U.S. 383, 392, 58 L. ed. 652, 655, the Supreme Court said, without qualification or reservation, that the right has always been recognized under American and English law, "to search the person of the accused when legally arrested, to discover and seize the fruits or evidences of crime." Subsequent decisions, notably *Carroll* v. *United States*, 267

U.S. 132, 69 L. ed. 543, and *United States* v. *Rabinowitz*, 339 U.S. 56, 94 L. ed. 653, have recognized and reaffirmed the *Weeks* case as firmly cementing the principle that a search of the person of one lawfully arrested is not unreasonable, and that the taking into custody of personal articles in the immediate control of an arrested person is not unlawful. (See also: *Blackford* v. *United States*, 247 F. 2d 745; *United States* v. *Lassoff*, 140 F. Supp. 944.) In the *Rabinowitz* case the court said: "It is unreasonable searches that are prohibited by the Fourth Amendment. * * * It was recognized by the framers of the Constitution that there were reasonable searches for which no warrant was required. The right of the 'people to be secure in their persons' was certainly of as much concern to the framers of the Constitution as the property of the person. *Yet no one questions the right, without a search warrant, to search the person* after a valid arrest. The right to search the person incident to arrest has always been recognized in this country and in England. * * * *Where one had been placed in custody of the law by valid action of officers it was not unreasonable to search him.*" (339 U.S. at 60, 94 L. ed. at 657; emphasis supplied.) The same rule has been held to apply even where an arrest is made for a misdemeanor. See: *Gatch* v. *United States*, (8th cir.) 4 F. 2d 629; *Gatch* v. *United States*, (D.C. cir.) 259 F. 2d 180.

The decisions of this court in *People* v. *Cook*, 20 Ill. 2d 400, *People* v. *Eder*, 406 Ill. 499, and others pointed out by the majority opinion, which hold that a search of the person is a proper incident to a valid arrest for traffic violations do no more than to follow the principle of the *Weeks* case as it has been interpreted and extended by subsequent Federal and State decisions.

To justify a departure from the rule adopted by the

past, the majority opinion relies on *Elliot* v. *State*, 173 Tenn. 203 (1938), 116 S.W. 2d 1099. In that case, however, where a motorist was lawfully arrested for reckless driving, it was the holding of the Tennessee court only that a search of the *automobile* was unreasonable in that it bore no relation to the offense for which the arrest was made. Making it clear that it would not have considered unreasonable a search of the motorist's person, the court concluded its opinion as follows: "It will be borne in mind that this is not a case in which evidence of the commission of another and independent offense had been described by the officer *incidental to the exercise of search within existing limits*, as for example in the *Goodwin* case, supra, where a concealed weapon *was found on the person*. . . ." We adhere to the rule heretofore followed in this court that, when the scope of the search is within lawful limits, discoveries of independent offenses may be testified to in prosecution of such offenses." (Emphasis supplied.) *Goodwin* v. *State*, 148 Tenn. 682 (1924), 257 S.W. 79, the decision referred to, was a prosecution for a concealed weapon that had been found on defendant's person after his arrest for drunkenness. In holding that the search which produced the weapon was reasonable the court categorically states: "When the arrest is lawful the right to search the person follows."

People v. *Gonzales*, 356 Mich. 247 (1959), 97 N.W. 2d 16, which is also relied upon by the majority opinion, goes no farther than the *Elliot* case. The Michigan court neither considered nor passed upon the question whether there must be something more than a valid arrest to render a search of the *person* reasonable, but decided only that to permit the search of an *automobile*, there must be some justification other than the issuance of a ticket for a traffic offense.

The same is true of *People v. Blodgett*, 46 Cal. 2d 114 (1956), 293 P. 2d 57. The court in that case held only that a double-parking violation would not justify a search of a *vehicle*, and did not even deal with a problem of whether a lawful arrest for such a violation would have carried with it authority to search the *person* of the one arrested.

In retrospect, it may be seen that none of the cases cited have either modified or rejected the rule that a search of the person is reasonable when one is lawfully arrested for a criminal offense. This being so, they hardly present a persuasive or compelling basis for a retreat from our holdings in *People v. Clark*, 9 Ill. 2d 400, and *People v. Lohse*, 406 Ill. 490, which are recognized as representing the majority view prevailing in this country. See: 1956 Wis. L. Rev. 347, 357.

The opinion adopted by my colleagues concedes that protection of arresting officers from attack is one of the grounds that makes a search of the person a lawful incident to a valid arrest, but refuses to recognize its application here by rationalizing that we are dealing with a "minor traffic offense that ordinarily results in a 'parking ticket' hung on the handle of the car, telling the offender that it is not necessary to appear in court if he mails in the amount of his fine." This reasoning is erroneous. The mere hanging of a traffic citation on a car door is not an arrest. Moreover, we are dealing here with the situation where an officer confronts an offender face-to-face and detains him from going on his way. When experience has proved to the contrary, on occasions at the cost of the life of an arresting officer, it is illogical that we should establish by judicial fiat that all minor traffic offenders must be accepted by arresting officers as persons who pose no threat to their personal safety.

Arrests for traffic violations can have serious consequences in our society such as loss of driving privileges, substantial fines or confinement in jail, loss of employment or disqualification therefor, and we always have those cases in which an officer may unwittingly halt a stolen car for a minor violation, or confront a driver or occupant wanted for more serious violations. Human nature being what it is, we should not establish as a matter of law that none of these persons will react with violence. It is true that the great majority of arrests for traffic offenses result in no untoward incidents but, in seeking to determine what is reasonable, it seems to me that our concern should be directed to the safety and protection of law enforcement officers, rather than to the welfare of persons who have put their rights in forfeit by violating the law. The majority says that a search of the person is reasonable if an arresting officer has basis for suspicion that something more than a routine traffic violation is involved; but this can be of little solace or help to the officer who has no suspicions until the offender suddenly produces a weapon. The only practical view, as recognized by the majority of ancient and modern courts, is that it is not unreasonable to search the person of one who has been validly arrested.

To me the opinion adopted is also subject to the vice that it fosters uncertainty and confusion in an area where none should exist, and in fact did not exist heretofore. The only result can be harassment to law enforcement and the effective prosecution of crime, with corresponding detriment to the citizens of this State. In departing from the view that a search of the person is reasonable upon lawful arrest the court says, in effect, that the search of the person here is unlawful because the offense is a minor one. The reasonableness of the search is thus made to rest on

the nature of the crime, rather than the fact of arrest itself. Neither law enforcement officials nor the public can know crimes will justify a search of the person, and with the present opinion as a guide, the validity of all searches, even after arrest for some felonies, will be in doubt until judicially tested. In my opinion the historic approach that a search of the person is reasonable upon valid arrest is the more perceptive, just and logical view and should be retained in this jurisdiction.

APPENDIX B.

Statutes Cited

Ch. 38, ¶ 413, Ill. Rev. Stat. (1959):

Owner of building permitting policy playing. Possession of lottery policies.

A person who keeps, occupies or uses or permits to be kept, occupied or used, a place, building, room, table, establishment or apparatus for policy playing or for the sale of what are commonly called "lottery policies," or who delivers or receives money or other valuable consideration in playing policy, or in aiding the playing thereof, or what is commonly called a "lottery policy," or for any writing, paper or document in the nature of a bet, wager or insurance upon the drawing or drawn numbers of any public or private lottery; or who manages or promotes any "lottery policy" or the game commonly called "policy;" or who shall have in his possession, knowingly, and writing, paper or document, representing or being a record of any chance, share or interest in numbers sold, in the nature of a bet, wager or insurance, upon the drawing or drawn numbers of any public or private lottery; or any paper, print, writing, numbers, device, policy slip, or article of any kind such as is commonly used in carrying on, promoting or playing the game commonly called "policy;" or who is the owner, agent, superintendent, janitor or caretaker of any place, building or room where policy playing or the sale of what are commonly called "lottery policies" is carried on with his knowledge, or who aids, assists, or abets in any manner, in any of the offenses, acts, or matters herein named, shall, upon conviction, for the first offense be confined in the county jail for not more than one year, or be fined not less than two hundred dollars nor more

than one thousand dollars, or both; and upon conviction for the second offense be imprisoned in the penitentiary not less than one year nor more than two years. 1905, April 29, Laws 1905, p. 192. [illegible]

Ch. 24, [illegible] 27, Ill. Rev. Stat. (1959)

Streets—Traffic and Sales Upon

To regulate traffic and sales upon the streets, sidewalks, public places, and municipal property. 1941, Aug. 15, Laws 1941, vol. 2, p. 19. [illegible] 23-27.

27-1[illegible]at. (6) of Municipal Code of Chicago

Stopping, Standing or Parking in Special Places

It shall be unlawful for the operator of any vehicle to stop, stand or park such vehicle in any of the following places, except when necessary to avoid conflict with other traffic or in compliance with direction of a police officer or official traffic sign or signal:

. . .

(c) Within twenty feet of a crosswalk at an intersection;

27-471. [illegible] of Municipal Court of Chicago

Whenever any vehicle is parked in violation of the provisions of any ordinance prohibiting or restricting parking and there is no person in attendance upon such parked vehicle to be arrested or served immediately with a traffic violation notice to appear in court to answer the charge of such violation, any police officer observing such violation may attach to the vehicle used in such violation a traffic violation notice so that the person in whose name such vehicle is registered may appear in the Municipal Court of Chicago on a day certain and at a designated court room to be named in such notice and answer to the charge of such violation.